ACTION
Medical Board of California REPORT
California Department of Consumer Affairs Vol.46 May 1993

Meet the New Board

New Members, New Officers, New Director

The Medical Board began the new year with a number of changes. The Board has new officers, as well as a new executive director and six new board members.

The new officers are all experienced Board members. The new president, Dr. Jacqueline Trestrail has been a member for over seven years. Vice president, Bruce Hasenkamp, has served for five years. Secretary, Dr. Robert del Junco, is beginning his third year of service. Dixon Arnett is completely new to the Board and began serving as Executive Director in January. There are two new members appointed to the Division of Medical Quality, three new members appointed to the Division of Allied Health Professions, and one new member appointed to the Division of Licensing, with an experienced member transferred from the Division of Allied Health Professions to the Division of Licensing.

Officers:

Dr. Jacqueline Trestrail was elected president in November. Dr. Trestrail, a San Diego radiologist, has served on the Board, on the Division of Allied Health Professions, since 1987 when she was first appointed by Governor George Deukemejian. In 1991, she was reappointed by Governor Pete Wilson. She is a former president of the San Diego Medical Society and has been an activist in a number of issues and served on a number of committees of the California Medical Association and the San Diego Medical Society. Most recently, San Diegans will be familiar with Dr. Trestrail for her work on AIDS issues, serving as Chair of the County AIDS Advisory Board.

Dr. Trestrail is a native Californian, who received her undergraduate and medical degrees from the University of Southern California, and received her postgraduate training at Los Angeles County Hospital. She was board certified in 1968, after completing radiology residencies at Denver V.A. and Los Angeles County Hospitals. She presently practices at Paradise Valley Hospital and Villa View Community Hospital, both in the San Diego area.

Bruce Hasenkamp was first appointed to the Board by Governor Deukemejian in 1988 and then reappointed to his second term by Governor Wilson in 1992. He has served on the Division of Allied Health Professions since 1988, and transferred to the Division of Licensing in December 1992. Mr. Hasenkamp is a lawyer by profession and has spent most of his career in business and not-for-profit management, both in government and in the private sector. A Wall Street attorney for five years and Army company commander for two, he was assistant dean of the Stanford Law School for six years when he was named to the White House staff by President Gerald Ford. He directed the prestigious White House Fellowship program, which annually selects 12-18 especially promising men and women, who early in their careers show particular promise to be leaders in the nation, to serve on the personal staffs of Cabinet secretaries and senior members of the White House staff and experience the leadership examples of major U.S. and foreign leaders through an extensive seminar program. Among the program's alumni are HUD Secretary Henry Cisneros and Colin Powell, Chairman of the Joint Chiefs of Staff.

Mr. Hasenkamp served into the first year of the Carter administration, when he returned to San Francisco as

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INSIDE THIS ISSUE:

President's Column

by Jacquelin Trestrail, M.D.

As I assume my duties as President of the Medical Board, it has become obvious to me that many physicians are blaming the Medical Board for a host of complaints that are not in its purview. Prosecutions against physicians for a variety of misconduct and criminal behavior may be a result of a Medical Board investigation; however, often these cases are as a result of an investigation conducted by other law enforcement agencies.

One such attribution is the function of the Drug Enforcement Agency (DEA), over which the Board has no control and in which there is no peer review process, as is in place at the Medical Board. The DEA offices have stepped-up activities, undercover investigations and prosecutions. That is not to say that if the Board receives complaints about a physician's prescribing practices that it will not prosecute. In fact, if the evidence is there, we most certainly will.

The medical profession, however, often assumes that if a physician is prosecuted for a violation of drug laws, that it is a result of a Medical Board investigation or "sting." Most of these operations are a result of the DEA's enforcement program. The difference between our operation and that of DEA's is that it is our Board's primary responsibility to protect the public from dangerous physicians, rather than the DEA's primary focus which is to obtain a criminal conviction. We are therefore more concerned with the medical implications of the violation of the drug laws and whether or not a physician should be removed from or limited in the practice of medicine, rather than the violation of the drug laws themselves.

In another instance, a criminal rape charge was brought against a physician by a Sheriff's Department. The District Attorney who brought the case to court on behalf of the Sheriff's Department was unsuccessful in obtaining a conviction for rape. The Medical Board, however, which was already conducting an investigation of the doctor's conduct and medical practice, will continue to pursue taking action against his license if the investigation sustains allegations that his conduct was outside of the normal accepted standard of practice. This is the Board's main responsibility.

The Board has been accused of being on a "witch hunt for numbers" and that it has abandoned its directive to reeducate and rehabilitate physicians in its "zeal" to discipline. It is true that our numbers of actions have increased and we do take our responsibility seriously to investigate complaints. The reasons, however, for the increase is not because the Board is engaging in some numbers game.

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☐ Wide Spread Abuse or ☑ A Few Bad Apples?

The CHP Investigation Into the Board is Released

by Dixon Arnett

By the time this newsletter goes to print, most of our *Action Report* readers will have heard something about the CHP investigation into the Medical Board. The press, as the medical profession certainly knows, often focuses on the sensational.

To give some background on this matter, the investigation was conducted at the request of the Department of Consumer Affairs (DCA). DCA was contacted by the California Association of Uniform Safety Employees (CAUSE) which made several allegations about misconduct among the rank and file and management within the Medical Board. Board investigators are represented by the CAUSE union.

Issues raised by the union ranged from allegations of widespread "case dumping" to misuse of state property to unfair personnel practices. Normally, the Attorney General would be chosen to conduct this type of investigation; however, because the Attorney General works so closely with Board staff, the Attorney General declined to conduct the investigation and suggested that the CHP be used instead.

The investigation took 8 months and interviewed over 40 employees and former employees of the Board. In a nutshell, the investigation highlighted allegations of case dumping with a series of anecdotal incidents and found some evidence of misuse of State property and expense accounts, and some personnel irregularities. However, without diminishing the seriousness of these violations, very few employees were involved. I would caution that the entire staff should not be painted with the same broad brush. The medical profession, from personal experience, should be especially sensitive to this.

"The allegation of case dumping was not sustained by the investigation."

It is not my intention to minimize the seriousness of the CHP's findings, however, if one only heard what was covered in the media, one would be left with the impression that abuse is wide spread and out of control. This was, and is not, the case.

I would like to address each issue specifically and frankly. Being the new "kid on the block" with no self-interest to defend the actions of the staff or my predecessor, I have the luxury of being objective. It is not in my interest to defend or malign, and I believe I may be trusted to fairly assess the issues raised in the report.

Case dumping:

The most serious allegation made was the issue of case dumping. If this accusation were sustained, employees responsible should be at best, fired, and at worst, criminally prosecuted for obstruction of justice. This allegation was not sustained by the investigation.

Press reports speak of 6 cases at Martin Luther King Hospital in Los Angeles, 4 of which involved patient deaths. The CHP report is critical of the handling of these investigations, however press reports have left the impression that these cases were "dumped." In fact, they were investigated and closed "with merit." (Closed "with merit" is the way the Medical Board closes cases that they have investigated, found some instance of wrong-doing, but there is insufficient evidence to sustain disciplinary action in court. These types of case files are held for 5 years in the event some new evidence is received that would cause it to be reopened.)

It is the CHP's contention that they were inappropriately closed, and that the investigations did not go far enough. It is important to note that our investigation staff at the time were in disagreement over the closures. It was for that reason the information on these investigations was sent to the Attorney General's Office for a legal opinion.

These cases are very serious. The facts surrounding them, to a non-physician like myself, appear gruesome and frightening. I have asked that they be reopened and re-investigated. If they are found to have enough merit to seek prosecution, this will indicate that they were indeed not properly investigated initially. I must emphasize however, that these cases were not "dumped." They were in fact the cause of much discussion among Board staff and counsel. Much has been made about the backlogged cases that were closed during the period following the legislative mandate

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Can Discipline be Prevented?

The High Cost of Bad Judgement

by Tom Heerhartz

The Medical Board receives over 6,000 complaints each year and conducts over 2,500 investigations into physician misconduct, out of which about 500 cases are referred to the Attorney General's Office for disciplinary filing. Could many of these disciplinary actions be prevented?

Virtually all of the cases sent to the AG will result in disciplinary action. The majority are the direct result of a physician's failure to use good common judgement and for placing other factors above concern for the patients' welfare.

Most discipline is meted out against physicians who clearly should have known better than to commit the acts that led to discipline and is not related to problems with clinical knowledge or skill. Most physicians could have avoided the problems by simply exercising better judgement.

To demonstrate, we can divide the cases that result in discipline into two main categories. First, there are the cases that are clearly caused by bad judgement or behavior. This bad judgement was not related to a lack of, or a loss of medical knowledge or skill, but represented a lapse in common sound judgement or ethics. The physician, using the "reasonable man" test, should have known his or her actions were wrong.

Secondly, there are the cases in which the physician's actions were a result of being deficient in medical knowledge or skill. For our purposes, we'll call these cases poor quality of care.

I reviewed 100 accusations just prior to their signature by the Executive Director between July and October, 1992. Although this could not be classified as a scientific sample to evaluate medical care in our State, it can certainly serve as a significant sample of the types of cases that are being sent to the Attorney General for administrative action each year.

The 100 cases reviewed can be broken-down into the following categories:

22 cases (22%) were based on out-of-state discipline
65 cases (65%) fell into the bad judgement category
44 cases of the cases that were initiated in California (56%) fell into the bad judgement category
34 cases (44%) initiated in California cases fell into the poor quality of care category.

A breakdown of the 65 bad judgement category cases shows they were a result of:

31 Drug prescribing, excessive, lack of medical necessity, or for family or self use
10 Criminal convictions for fraud, insurance or grand theft
5 Sexual abuse or misconduct
4 Other criminal convictions
2 Aiding and abetting unlicensed practice
2 Signing false documents
1 Excessive testing and billing for tests not performed
1 Violation of terms of probation
1 Receiving illegal kickbacks
1 Patient consent violation
1 Falsifying license application
1 Self abuse of alcohol
1 Failure to keep records
1 Defrauding patients
1 Failure to keep inventory of controlled substances

The 35 poor quality of care cases, breakdown into the following:

13 Missed, poor, incomplete diagnosis
10 Non-surgical poor quality of care management
7 Poor surgical technique or post surgical management
3 Petition to compel competency exam
1 Petition to compel psychiatric exam
1 Gross prescribing error

The numbers show that most physicians who have been disciplined could have avoided the dicipline by using better judgement or behavior. Exercising better judgement and maintaining higher ethical standards could have prevented more than half of the 100 disciplines.

The 31 cases involving drug prescribing practices are certainly significant. Lest anyone think that these cases are a result of physicians only prescribing excessive narcotics to people suffering from chronic pain, let me assure you they are not. These cases range from self-prescribing, prescribing to friends and relatives, and prescribing on demand, often without any physical examination.

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How Does California *Really* Rank?

by Dixon Arnett

Every year, Public Citizen, a consumer watch-dog group, publishes a report that ranks all of the Medical Boards in the United States. They rank them based on the number of disciplines per 1,000 doctors in each state. This year, California ranked 37 on their list. In my view, however, the report is seriously flawed!

Does this ranking mean that California consumers are less protected than in most other states? Is ranking states solely on the number of disciplines per 1,000 physicians an accurate measure?

To evaluate the value of the ranking, one must first look at the criteria of discipline and determine if the same actions are counted by all states as disciplinary actions. If not, this is a major problem in developing an objective ranking system. (This is not entirely Public Citizen's fault, as they depend on the states and the Federation of State Medical Boards for their information. They acknowledge this difficulty in a "disclaimer" in their report.)

Clearly, the definition of discipline is sometimes significantly different from one state to another. Some states actually count a letter to inform a licensee that they're late in paying their renewal fees as a formal discipline. California does not count this as a disciplinary action.

In California, for example, informal disciplinary actions (those that do not result from a public accusation) are not matters of public disclosure. Many states count these types of actions as formal discipline. If California counted these as formal disciplinary action, we would be credited with an additional 330 actions a year. We do not count termination of probation, while some states do. We also do not count letters of warning regarding delinquencies in required continuing medical education (CME), which some states report.

Another problem is only ranking the boards, when one really needs to look at the whole system and process. In California, as in most states, a physician must go through an administrative hearing before a final disciplinary action may be rendered. Then the physician has many levels of appeal - Superior Court, Court of Appeals, State and U.S. Supreme Courts. This is a lengthy process over which the Medical Board has no control or authority.

If California were to engage in a numbers game, going for any disciplinary action rather than the appropriate disciplinary action, we would be much more inclined to settle cases rather than go to a hearing. Instead, we make the choice to work within the legal system, rather than circumvent it for statistical benefit.

California has an additional problem. Over the last three years, the Medical Board has made many improvements in the system, by almost doubling its enforcement staff and making many organizational changes that have resulted in completing many more productive investigations.

These improvements have resulted in overwhelming the Attorney General's Office. At present, our Board has over 1,000 cases awaiting final adjudication, about 400 of which are awaiting initial filing. The Medical Board can take no credit for these cases as final decisions, as they are still in the court system - outside of the Board's control. It's ironic, but if we shut-down our investigations tomorrow, and referred no more cases in the next three years, we could still be ranked in the top 50% when these cases make it through the system! (Ultimately these cases will make it through the system.)

Another factor that affects the disciplinary actions taken in this State is the standard of proof that must be met to obtain an action. California is one of 15 states that are required to use the more stringent "clear and convincing evidence" standard, while 32 other states use the "preponderance of evidence" standard. This means that there are many cases each year which are investigated, but cannot quite meet the test of formal discipline in our State.

It is important to note that other states appear to discipline a much lower percentage of cases for quality of care issues. Only a very small percentage (estimated at 5% to 10%) of the cases we receive from other states are for quality of care issues, rather than behavior. In our State, about 25% of the disciplinary filings involve medical treatment and care issues.

Recently, we have experienced an upsurge in interest in how California handles quality of care cases. California, it seems, is more successful than most states in proving these kinds of cases. Over the past year, we have been involved in sharing information on this issue with the Federation of State Medical Boards, AARP, and the U.S. Auditor General. This further demonstrates that California is willing to put in the time, the investigation work, and the medical expertise needed to make these more difficult cases.

The Public Citizen report can serve a positive purpose and further educate consumers. Certainly, a prospective patient should be aware of a physician's disciplinary record. Consumers should also be aware, however, that the absence of discipline, in any state, is not an endorsement of medical quality. To lead consumers to believe that the medical boards can assess the quality of every physician's

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Board Legislative Proposals - 1993

This year the Medical Board will be seeking bills for seven proposals to improve consumer protection by strengthening the enforcement program and tightening licensing requirements. Four of the proposals were introduced last year, but were unsuccessful, and three are completely new this year.

- **Establish a 15-day compliance deadline to transmit copies of medical records to the Board:**

At present, the Board's only recourse in a doctor's noncompliance with a request for records is to obtain a court order. This wastes valuable staff time in obtaining records (ultimately obtained anyway through the courts) and only serves to delay discipline of the offending physician.

Last year, attempts to find an author for this legislation were unsuccessful.

- **Restore authority of Medical Quality Review Committees (MQRCs) to make final decisions in petition cases:**

The Division of Medical Quality (DMQ) must now review and make final decisions on all MQRC petition cases. The previous system was more efficient, and allowed the DMQ to retain petition review in selected cases. Under the present system, the DMQ is having to meet more frequently, and there is no significant benefit to requiring DMQ to review all petition cases.

Last year, attempts to find an author for this legislation were unsuccessful.

- **Increase physician two-year license fee ceiling to $600:**

The increase is needed primarily to pay for added resources for the Attorney General's Health Quality Enforcement Section and Office of Administrative Hearings. The Attorney General's Office now has over 1,000 of our cases with approximately 500 awaiting legal review (no action taken). As our staff has become more efficient in processing investigations, a backlog crisis has been created in the Attorney General's Office. All of the improvements made in enforcement will be futile if the cases are stalled in the AG's Office.

This legislation died on the Assembly floor last year, after the Budget Act transferred 10% of our special fund into the general fund.

- **Require an additional postgraduate year if undergraduate training is not accredited:**

Because no international accrediting system for medical schools exists, there is a need to raise the present minimum requirement from one year to two. As there is no way of verifying the quality of undergraduate training received in a non-accredited setting, one postgraduate year is not enough to ensure that the overall clinical training received is sufficient to protect the public. The two-year exemption to practice medicine while participating in an approved postgraduate training program will be extended to three years.

Last year, the late Assemblyman, Dr. Filante, decided that a measure requiring additional training would not be successful. Instead, at the suggestion of the CMA, AB 3239 was amended to clarify and improve statutory immunity for the program directors in postgraduate medical programs when providing the Board with their certifications of successful or unsuccessful completion of medical residencies by individual residents. The bill failed passage in the Senate Judiciary Committee.

- **Allow the Division of Licensing to charge a fee for the initial oral examination taken by an applicant:**

Currently, the Division has limited authority to charge only for an oral reexamination after an applicant fails on the first attempt. This amendment would give the Division the authority to charge for the initial oral exam as well. As a result of having to rent a facility within which to conduct the oral exams, the Board is absorbing these costs in their budget. With the increased examination costs for United States Medical Licensing Exam, Step 3, the Board is not likely to have the fiscal flexibility to pay for the oral examination costs next fiscal year. It is estimated that the cost for each exam in $50.

- **Include Canadian doctors in the reciprocity section of the licensing law:**

Currently, under the reciprocity pathway to licensure, only those applicants who are licensed and have practiced medicine for more than four years in another state are required to take the oral exam. This change in the law would give the authority to the Division to license Canadian doctors through the reciprocity section of the law and require an oral exam of practicing Canadian physicians, consistent with the requirements of U.S. physicians practicing in other states.

- **Require that applicants meet all of the undergraduate medical education and training requirements before beginning their postgraduate training:**

Current law requires only that an applicant: 1) have an application on file with the Division of Licensing; and 2) pass FLEX Component 1 or its equivalent before beginning a postgraduate training program. The absence of this authority in the law weakens the Division's ability to ensure that applicants are adequately qualified prior to practicing medicine in a postgraduate training program and on the citizens of this state. This requirement would ensure that an applicant's credentials are adequate to satisfy the ultimate licensing requirements, once they have completed their postgraduate training.▲

Legal Eagle

by Foone Louie

The new State laws (effective January 1, 1993) that affect California physicians and the Board's Enforcement Program are as follows:

AB 190 (Bronzan). Informed Consent for Silicone Implants and Collagen Injections:

Requires physicians to provide patients with written information regarding the risks involved in the following cosmetic surgeries:

1) Silicone implants (Business and Professions {B&P}Code Section 2259)
2) Collagen injections (B&P 2259.5)

Failure to comply constitutes unprofessional conduct. (FDA approved brochures are now being shipped with the devices/material from the Collagen Corporation.)

Silicone implants and collagen injections are the latest to be added to the growing list for "Standardized written summaries":

◆Breast Cancer Brochure, Health and Safety Code Section 1704.5 (1980).

◆Blood Transfusion Summary, Paul Gann Act. H&S 1545 (1989).

◆Prostate Cancer Brochure, H&S Code Section 1704.7 (1990).

AB 2743 (Frazee). Recovery of costs of investigation and prosection from licensees.

Empowers all boards under Consumer Affairs (including the Medical Board) with the discretionary authority to request an administrative law judge, in the discipline of a licensee, to order repayment of reasonable costs of investigation and prosecution up to the date of the hearing.

Section 125.3, B&P Code (AB 2743 supersedes AB 3745 [Speier], which is duplicative).

AB 3077 Katz. MDs who default on their federal student loan agreements.

Requires the Medical Board to: 1) review complaints from the federal government that physicians have failed to provide service pursuant to their medical student loan commitments; and 2) to take disciplinary action if unprofessional conduct is indicated in individual cases. Section 2430, Business and Professions Code. (Supported by the National Health Services Corps as an incentive to medical graduates not to renege on their promise to serve in underserved areas after graduation to work off their federal grants or loans.)

SB 1876 (Deddeh). Intoxicated while attending patients is a misdemeanor.

Existing law makes it unprofessional conduct for a physician to attend to patients while intoxicated to the extent that the ability to practice safely is impaired.

This new law makes it also a misdemeanor, a criminal offense, as well as unprofessional conduct.
Section 2240, B&P Code.

AB 3309 (Moore). Lab results must be explained in plain language.

Requires physicians and other health professionals to provide, upon request of patients, the results of their clinical laboratory tests "in plain language conveyed in the manner deemed most appropriate" by the health professional.

Section 1795.27, H & S Code, is added to the "Patient Access to Health Records Act." This Act provides that wilful violation of the act constitutes unprofessional conduct.

SB 664 (Calderon). Jail time is now possible for marking up clinical lab charges.

Under prior law, physicians and other health professionals were only required to disclose the "name, address and charges of the clinical laboratory" when billing patients for outside clinical lab services.

The prevailing argument was that no one would have the gall to jack up the lab charges with this kind of spotlight disclosure. Right? Wrong, said the Legislature in dropping the second shoe with the passage of SB 664 which makes it a criminal offense for any health provider to increase the price of a clinical laboratory test when the health provider performs no actual service. (Exception: It is OK to charge a modest handling fee for drawing and processing the specimens in the provider's office.)

The penalty for paying wholesale and charging retail is rather stiff. First offense is a misdemeanor. Second offense is a felony calling for State prison.

Moral: If the clinical lab gives you a discount price because of your volume business, you must pass the savings on to your patients.

Section 655.5, B&P Code.

Foone Louie is staff counsel to the Medical Board of California.

FDA Safety Alert

Needlestick and Other Risks from Hypodermic Needles on Secondary I.V. Administration Sets - Piggyback and Intermittent I.V.

by James S. Benson

There is a risk of needlestick injuries from the use of hypodermic needles as a connection between two pieces of intravenous (I.V.) equipment.[1,2,3] The use of exposed hypodermic needles on I.V. administration sets or the use of syringes to access I.V. administration set ports or injection sites are unnecessary and should be avoided. Hypodermic needles should only be used in situations where there is a need to penetrate the skin.

The terms "piggyback" or "intermittent I.V." are commonly associated with this equipment configuration. In these procedures, a hypodermic needle is inserted either into a connecting "Y" site on a primary I.V. line ("piggybacking"), or directly into the I.V. access port ("intermittent I.V.").

Research shows that I.V. tubing-needle assemblies have a higher risk of needlestick injury than any other needle devices; needlestick rates more than six times as high as those from disposable syringes have been documented.[2] Although the risk is low, such needlestick injuries have the potential for transmitting workers (HCWs) sustain needlesticks from exposed needles dangling from unintentionally disconnected secondary medication sets and from needles which protrude from disposal containers. FDA's Device Experience Network has received at least 24 reports describing hypodermic needles which have broken off inside I.V. administration set ports. Injuries to patients may be incurred if these needles travel directly into the patient's bloodstream.

Although FDA can not recommend use of specific products, we strongly urge that needleless systems or recessed needle systems replace hypodermic needles for accessing I.V. lines. There is no evidence that patient bloodstream infection rates have increased with the implementation of needleless systems which have been cleared for marketing. Patient infection rates, however, should be monitored to ensure appropriate use of these products, as well as minimize risks to patients.

For recessed needle systems, we agree with researchers who have stated that devices with the following characteristics have the potential to reduce the risk of needlestick injuries:

- A fixed safety feature to provide a barrier between the hands and the needle after use; the safety feature should allow or require the worker's hands to remain behind the needle at all times.
- The safety feature is an integral part of the device, and not an accessory.
- The safety feature should be in effect before disassembly and remaining in effect after disposal, to protect users and trash handlers, and for environmental safety.
- The safety feature should be as simple as possible, and requiring little or no training to use effectively.

Products with these characteristics are currently available on the market. During 1991, some of these products were evaluated as part of a pilot study by the State of New York. Preliminary analysis of these products were evaluated as part of a pilot study by the State of New York. Preliminary analysis of these data from hospitals which used a safer technology for I.V. delivery (i.e., recessed needle or needleless systems), alone or in combination with other safety devices, showed a dramatic decline in sharps-related injuries and reductions of up to 93 percent in I.V.-related injuries.[4]

On December 6, 1991, the Occupational Safety and Health Administration (OSHA) promulgated a final rule which is intended to minimize or eliminate the occupational exposure to bloodborne pathogens. In promulgating the standard, which became effective on March 6, 1992, OSHA concluded that exposures can be minimized or eliminated using provisions which include engineering controls (e.g., use of self-sheathing needles), work practices (e.g., universal precautions), and personal protective clothing and equipment.

FDA is interested in information concerning the role of medical devices in the transmission of bloodborne pathogens, including HIV. We encourage the reporting of potential hazards for patients and health care professionals to the Product Problem Reporting Program at 1-800-638-6725.

For more information or questions, physicians may contact: Thomas Arrowsmith-Lowe, DDS, MPH, Deputy Director, Office of Health Affairs, Center for Devices and Radiological Health, FDA at 301-427-1060.

1.Jagger J. Testimony on preventable needlesticks, preventable HIV infections, preventable deaths among health care workers. Presented before U.S. Congress Committee on Small Business, Subcommittee on Regulation, Business Opportunities, and Energy. Washington, D.D., February 7, 1992.
2.Jagger J. Hunt EH, Brand-Elnagger J., Pearson RD. Rates of needlestick injury caused by various devices in a university hospital., New England Journal of Medicine 1988; 319:284-288.
3 Jagger J. [Letter to James S. Benson, Director, Center for Devices and Radiological Health, Food and Drug Administration]. February 14, 1992.
4.Chiarello L. Testimony on needlestick prevention technology. Presented before U.S. Congress Committee on Small Business, Subcommittee on Regulation, Business Opportunities, and Energy. Washington, D.C., February 7, 1992.

James S. Benson is the former Director of the Center for Devices and Radiological Health, FDA.

INFORMED CONSENT
in Skilled Nursing and Intermediate Care Facilities

by Margaret DeBow

The Department of Health Services has adopted nursing facility regulations clarifying patients' rights in Skilled Nursing Intermediate Care Facilities. These regulations, effective June 26, 1992, focus on the patients' right to be free from chemical and physical restraints and the right to give or refuse to give informed consent to medical treatment.

The regulations interpret case law provisions which require physicians to provide information that is material to a decision regarding treatment. The regulations clearly assign the physician the responsibility to determine what is "material information" for each patient, given his or her particular condition. Likewise, it is the physician's responsibility to obtain informed consent when necessary.

Facilities may obtain general consent for routine nursing care through their admission agreement or by other means. Routine nursing care is defined as care which does not require a physician's order, such as bathing, dressing, or assistance with ambulation. Facilities are not required to verify that consent was granted by a patient to a physician for most physician-ordered medical care. However, specific information is required to be provided by the attending physician and informed consent must be documented in the patient's health record before the facility can initiate certain treatments. At this time, these treatments include physical restraints and psychotherapeutic drugs. Documentation of informed consent is necessary whenever the above treatments are proposed or whenever material circumstances and risks change regarding continuation or modification of treatments already consented to. In situations where informed consent is appropriate, the following specific information must be provided:

1. The reason for the treatment and the nature and seriousness of the patient's illness.
2. The nature of the procedures to be used in the proposed treatment, including their probable frequency and duration.
3. The probable degree and duration (temporary or permanent) of improvement or remission, expected with or without such treatment.
4. The nature, degree, duration, and probability of the side effects and significant risks commonly known by health professionals. The physician is not required to disclose the risks of the proposed procedure if the following is documented in the patient's record:

   a) That the patient or patient's representative specifically requested that he or she not be informed of the risks. This does not waive the requirement for providing the other material information concerning the treatment or procedure.

   b) That the physician relied upon objective facts, as documented in the patient's record, that would demonstrate to a reasonable person that the disclosure would have so seriously upset the patient that the patient would not have been able to rationally weigh the risks of refusing to undergo the recommended treatment and that a patient's representative gave informed consent.

5. The reasonable alternative treatments and risks, and the health professional who is recommending this particular treatment.
6. That the patient has the right to accept or refuse the proposed treatment and, if he or she consents, has the right to revoke his or her consent for any reason at any time.

All of the above information must be provided, although only informed consent must be documented.

When a court has determined that the patient is incompetent, or the physician has evaluated that the patient lacks the capacity to understand the information, the right to informed consent is transferred to the patient's representative. When incapacitated patients do not have a representative, the physician must notify the facility and take part in an interdisciplinary team decision-making process as described in Section 1418.8 of the Health and Safety Code.

If physicians with patients in skilled nursing facilities or intermediate care facilities have any questions about the new regulations, or would like a copy of the regulations, they may directly contact:

Dr. Pat Chase, Chief Medical Consultant
Department of Health Services
714/744 P Street
P.O. Box 94732
Sacramento, CA 94234-7320
(916) 322-9027

Margaret DeBow is Deputy Director in charge of Licensing and Certification for the Department of Health Services.

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The main reason there have been such a spate of recent cases is due to improvements in our enforcement program created by the Presley Bill (SB 2375) which enabled increased funding to hire more investigators and prosecutors. We are not creating "numbers" but simply resolving more cases and handling complaints more effectively.

The number of complaints are increasing each year as consumers become more sophisticated and knowledgeable about their health care and rights. With a more adequate number and better trained staff, together with the Attorney General's Health Quality Enforcement Section that specializes in medical cases, it is not surprising that the Board is now able to handle more cases, and process them more efficiently.

Complaints come into our Central Complaint and Investigation Control Unit (CCICU) in Sacramento. They are first reviewed and handled by technicians, who screen complaints to determine if they fall under the Board's jurisdiction. They are reviewed by our staff physicians and supervisors, who filter the complaints. About 30% are sent to field offices for investigation. It is important to note that our staff depends on our staff physicians and a large pool of board-certified experts in a variety of specialties to obtain first-rate and objective opinions when the complaint is regarding medical quality issues.

The Medical Board's directive to reeducate and rehabilitate was also changed by the Presley Bill. Our legal mandate is now to first, protect the public, and second, to rehabilitate physicians.

The question asked most by the medical and consumer communities is, "Why doesn't the Medical Board 'act' against a 'bad' doctor?" The Medical Board is a State agency and must follow all laws, regulations, and legal procedures. In many cases we are limited by lack of evidence, and therefore, limited in what we can do. Also, we have the problem of defining "bad." In the case of a physician who is negligent or incompetent, our Board, by law, is required to prove by "clear and convincing evidence" that the doctor acted in a manner that was an "extreme" departure from the community standard of practice. This must be proven in court, and it is not always easy to obtain expert opinions that agree. (We do not "shop" for an adverse opinion, as in malpractice cases, but we attempt to find objective, qualified, board-certified experts in the appropriate medical specialty to render an honest, independent opinion.)

So what can the Board do for doctors, except collect fees and prosecute them? We can try to educate physicians about the pitfalls that cause discipline and the consequences. That is my goal, as well as that of the new Executive Director, Mr. Dixon Arnett.

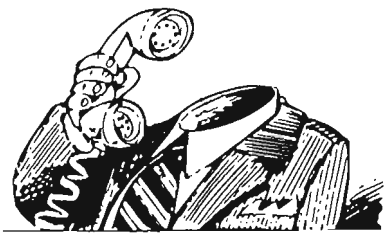
As an example, approximately 20% of prosecutions are due to prescribing problems. We are collecting data on prescribing problems and will disseminate this to California physicians. We know that as the number of years increase since training the incidence of prescribing problems also increases. So in this area, it would seem that the cause may be a lack of "keeping up." We hope to not only educate but encourage continuing education courses about current prescribing and drug use.

In addition, we hope to educate physicians about the Medical Practice Act and its key provisions related to discipline. For example, physicians and their lawyers should be made aware of the impact of the practice of pleading "nolo contendere" to a misdemeanor. Not only can this result in a disciplinary action against a physician's license, but also result in having Medi-Cal and MediCare discontinue the doctor's provider status. (This issue was covered in the last issue of the Action Report, in the "Legal Eagle" column.)

No disciplinary board will ever be looked on with favor by everyone. Consumers, not familiar with the practice of medicine will often think that when a physician is not disciplined that it's because the Board is "soft" on doctors. Physicians, sympathetic to the pressures of practicing medicine, will often think the Board is too severe. We do hope, however, we can make the Medical Board more "user friendly" both for doctors as well as consumers.

The Board has made a number of improvements to make it more accessible to consumers. We have a toll-free telephone line, central complaint handling, trained consumer services representatives, and a number of publications that outline patients' rights and options.

To make the Board more accessible to physicians, our staff, including our physician consultants and legal counsel, are available to answer your questions. The *Action Report* will continue to bring you more information about the Board's activities, medical and legal issues. We will also be glad to send speakers to any group to further these aims. In addition, I would appreciate your comments. Of course, constructive comments will be most helpful, but all are welcome!



The number you are calling is no longer in service.....

All of the telephone numbers of the Medical Board, except for the toll-free complaint line, have been changed. Please see the back cover of this issue for all of the new numbers.

TIRED OF JUNK MAIL?

We get a number of letters from physicians who voice their concerns over the use of the Medical Board's mailing list by commercial interests.

The list of licensed physicians in our State is public record. If commercial interests are willing to pay the Medical Board for its lists the Board may not refuse. Physicians may, however, make a formal request that their name be withheld from any list that is being produced for other than official Medical Board mailings.

Physicians who want their name withheld from these kinds of mailings should write:

Medical Board of California
Licensing Verification Section - Mailing List
1426 Howe Avenue, Suite 54
Sacramento, CA 95825-3236

Any list produced for commercial interests never contain any personal biographical data. The information is limited to name and address of record.

Prostate Cancer Brochure is Now Available

On January 1, 1991, legislation (AB 348, Burton) became effective. It urges physicians to make available to patients a standardized written summary that will inform patients about the advantages, disadvantages, risks, and descriptions of procedures with regard to viable alternative methods of treatment of prostate cancer.

The Department of Health Services, on the recommendation of the Cancer Advisory Council, recommends the brochure "What You Need to Know About Prostate Cancer" published by the National Cancer Institute (publication #93-1576).

To order this publication, contact the NCI at 1-800-422-6237.

Medical Board meetings are open to the public.....

1993 Board meetings presently scheduled are:

May 6 & 7 - Sacramento
July 29 & 30 - San Francisco
November 4 & 5 - Sacramento

Call (916) 263-2389 for complete information.

DISCIPLINARY ACTIONS

February 1, 1992 - November 30, 1992

DECISIONS:

Physicians and Surgeons

ADAMS, Robert W., M.D. (A-20726) - Highland, CA
Stipulated Decision. Relapse in his drinking problem in violation of probation under prior discipline.
Revoked, stayed, probation extended to 10 years on terms and conditions.
October 24, 1992

ARTHUR, Gerald W., M.D. (G-3513) New York, NY
2305 B&P Code
Disciplined by New York Board for prescribing psychotropic drugs to patients without medical justification.
California: Revoked. Default.
August 26, 1992

ANSPACH, Paul L., M.D. (A-12198) - Bryn Mawr, CA
2305 B&P Code
Discipline by the Alabama Board.
California: Revoked. Default.
April 23, 1992

BASS, Michael P., M.D. (C-32503) - San Francisco, CA
2238, 2261, 4232 B&P Code, 11168 H&S Code
Violated statutes regulating drugs; addictive self use of controlled substances; concealed Arkansas discipline in application for California license.
Revoked.
June 21, 1992

BAYLESS, James M., M.D. (C-27649) - Riverside, CA
725,2237,2238,2242,2234 B&P Code;
11153(a) H&S Code
Stipulated Decision. Misdemeanor conviction for unlawfully prescribing controlled substance - not for a legitimate medical purpose; excessive, grossly negligent and incompetent prescribing.
Revoked, stayed, 5 years probation on terms and conditions, including 90 days actual suspension.
March 21, 1992

BERMAN, Merrill L, M.D. (G-13003) - Baltimore, MD
2305 B&P Code
Stipulated Decision. Discipline by Maryland Board for sexual relations during therapy and for false billings.
California: Revoked, stayed, 5 years probation on terms and conditions. June 21, 1992

BIRKMEYER, Christopher, M.D. (G-53472) - San Diego, CA
2237 B&P Code
Stipulated Decision. Two separate convictions for obtaining a controlled substance by fraud.
Revoked.
March 7, 1992

BRANSON, Donald E., M.D. (C-19501) - Rancho Mirage, CA
2305 B&P Code
Colorado Board discipline for long-term alcohol abuse. Prior discipline.
California: Revoked.
May 13, 1992

BRIDWELL, Willard S., M.D. (A-10593) - Hanford, CA
2234(b),(c) B&P Code
Stipulated Decision. Gross negligence in anesthesiology practice.
Revoked, stayed, unlimited term of probation on terms and conditions, including limited service.
March 8, 1992

BUCANNAN, Lee K., M.D. (C-37570) - Foster City, CA
725, 2234(b),(d), 2262 B&P Code
Made short, excessive visits to geriatric patient in nursing facility, then made false billings for more involved visits at higher rates.
Revoked. Default.
March 8, 1992

CHAPLAN, Abraham A., M.D. (G-6131) - Tarzana, CA
2236, 2305, 2242, 2238, 2234(e) B&P Code.
Conviction in New York for grand larceny. Conviction in New Jersey for Medicaid fraud. Licenses in New York and New Jersey were revoked. Moved to California where he prescribed controlled substances without examination or medical indication. (He swapped drugs for jewelry.)
Revoked.
March 8, 1992

CUSICK, Lawrence P., M.D. (G-9819) - Burlingame, CA
490, 2236, 2234(b),(c),(d) B&P Code
Gross negligence, repeated negligent acts and incompetence in the treatment of patients at a walk-in clinic. Also convicted of sexual battery.
Revoked.
October 24, 1992

CYR, James O., M.D. (G-41898) - Durham, CA
Failed to comply with requirements of probation under prior discipline.
Revoked. Default.
June 7, 1992

DAZO, Alfredo S., (C-38642) - Roseville, CA
Probation violation.
Revoked, stayed, 10 years probation on terms and conditions, including 180 days actual suspension.
June 21, 1992

ELY, Peter K., M.D. (G-49265) - Sonoma, CA
2234(b),(d) B&P Code
Stipulated Decision. Gross negligence and incompetence in anesthesiology practice.
Revoked, stayed, 5 years probation on terms and conditions including 60 days actual suspension.
April 1, 1992

ESCAJEDA, Richard M., M.D. (G-4088) - San Diego, CA
726, 2264, 2234(b) B&P Code
Stipulated Decision. Sexual misconduct with female patients constituting gross negligence. Employed unlicensed persons to engage in the unlawful practice of medicine.
Revoked, stayed, 5 years probation on terms and conditions, including 90 days actual suspension.
August 1, 1992

FERSTANDIG, Russell A., M.D. (G-32173) - Franklin Lakes, NJ
2305 B&P Code
Disciplined by New Jersey Board for using crack cocaine and having his patients buy it for him.
California: Revoked.
November 16, 1992

GOEI, Gordon S., M.D. (A-23054) - Beverly Hills, CA
2261 B&P Code
Stipulated Decision. Knowingly making a document related to the practice of medicine which falsely represents the facts.
One year suspension, stayed, 3 years probation on terms and conditions.
March 8, 1992

GOTTUSO, Michael A., M.D. (G-49023) - Calimesa, CA
2305, 2239(a) B&P Code
Discipline by New York Board for criminal conviction and habitual use of narcotics. In California, wrote false prescriptions for Vicodin for self use.
California: Revoked.
June 20, 1992

HARRIES, Thomas, M.D. (G-12747) - Hillsborough, CA
2238, 2234 B&P Code
Stipulated Decision. Prescribed Percodan for his wife and failed to keep required records relating to the pathology. Over-solicitous with female patient thereby blurring the boundaries between physician and patient.
Revoked, stayed, 7 years probation on terms and conditions, including one year actual suspension.
February 7, 1992

HARRIS, Leonard C., M.D. (G-45564) - Upland, CA
726, 2236, 2234(b),(c)(d)(e)(f) B&P
Conviction of assault with a deadly weapon with force likely to produce great bodily harm. In a second matter, during a house call to ostensibly draw blood sample from a female patient, he drugged her unconscious and sexually abused her. Gross negligence, incompetence, and corruption.
Revoked.
June 17, 1992

HASKELL, Robert, M.D. (A-29045) - San Rafael, CA
2234(c) B&P Code
Repeated negligent acts in weight reduction practice, including multiple repeated injections of Vitamin B12, chromium, and procaine; repeated use of thyroid extract for weight loss; and failure to monitor for side effects.
Revoked, stayed, 5 years probation on terms and conditions.
March 1, 1992

HASTIE, James S., M.D. (G-6401) - Goodlettsville, CA
2305 B&P Code
Discipline by Tennessee Board for prescribing controlled substances without medical indication.
California: Revoked, stayed, 5 years probation on terms and conditions.
June 21, 1992

IACULLO, Robert L., M.D. (G-41193) - Marina Del Rey,. CA
480(a)(2), 2234(f) B&P Code
Stipulated Decision. Dishonesty in filing false bank applications.
Revoked, stayed, 5 years probation on terms and conditions.
May 28, 1992

KALIN, David P., M.D. (G-49387) - Largo, FL
2305 B&P Code
Discipline by Florida for gross malpractice.
California: Revoked. Default.
April 1, 1992

KAPPLER, John F., M.D. (C-25627) - Van Nuys, CA
2236 B&P Code
Stipulated Decision. Conviction in Massachusetts for second degree murder, armed assault with intent to commit murder, and assault and battery with a dangerous weapon. He ran down two joggers, killing one.
Revoked.
February 21, 1992

KIRCHNER, Arthur B., M.D. (G-12129) - Atlanta, GA
2305 B&P Code
Stipulated Decision. Discipline by Georgia Board for using abusive amounts of cough medication with Codeine supplements, and for writing prescriptions in the names of relatives to obtained controlled substances for self use.
California: Revoked, stayed, 5 years probation on terms and conditions.
June 17, 1992

KRAUS, Vernon J., M.D. (C-29717) - Fort Worth, TX
2305 B&P Code
Stipulated Decision. Disciplined by Texas Board for impairment due to substance abuse.
California: Revoked, stayed, 5 years probation on terms and conditions.
September 11, 1992

KUMAR, Narendra, M.D. (A-34378) - Modesto, CA
490, 2236 B&P Code
Conviction for 8 counts of Medi-Cal fraud. In a separate case, conviction for forgery in filing a false insurance claim by altering an auto repair bill from $722.46 to $3,722.46.
Revoked.
July 31, 1992

LALL, Bharat, M.D. (A-41044) - San Diego, CA
726, 2234(b)(c) B&P Code
Stipulated Decision. Sexual misconduct with female patients during examinations and massage therapy. Gross negligence and incompetence.
Revoked.
July 17, 1992

LA MARCA, Donald D., M.D. (G-13959) - San Francisco, CA
2234, B&P Code
Stipulated Decision. Repeatedly failed to document or ensure complete documentation of procedures performed on colo-rectal patients on the basis for diagnosis and treatment of those patients. Deceptive and misleading advertising used in Anucare Center brochures and stationery.
Revoked, stayed, 5 years probation on terms and conditions.
March 30, 1992

LEE, Kyo Duck, M.D. (A-37032) - Stockton, CA
725, 2238, 2234(d) B&P Code
Stipulated Decision. Clearly excessive and incompetent prescribing of anorectic drugs to weight control patients. Failed to comply with statutes regulating controlled substances.
Revoked, stayed, 5 years probation on terms and conditions, including 90 days actual suspension.
November 11, 1992

LEHMAN, Kent W., M.D. (G-38595) - Garden Grove, CA
810, 725, 2234(e) B&P Code
Stipulated Decision. Aided and abetted excessive use of diagnostic and treatment procedures and facilities, double billing for services, and false charges for comprehensive or extended office visits, in a dishonest scheme to present fraudulent or inflated insurance claims on a major scale.
Revoked, stayed, 10 years probation on terms and conditions, including one year actual ssuspension.
September 12, 1992

LOO, Charles D., M.D. (G-24870) - Loma Linda, CA
2234(c),(d) B&P Code
Incompetence and repeated negligent acts in 2 year management of patient with lump in breast that developed into terminal metastatic cancer.
Revoked. Default.
July 15, 1992

LUNDQUIST, Charles G., M.D. (A-12123) - San Diego, CA
2236 B&P Code; 11153 H&S Code
Stipulated Decision. Conviction for prescribing CNS stimulants without a legitimate medical purpose.
Revoked, stayed, 5 years probation on terms and conditions, including 60 days actual suspension.
August 8, 1992

MASON, Edward J., M.D. (G-6181) - Dallas, TX
2305 B&P Code
Discipline by Texas Board.
California: Revoked. Default.
June 10, 1992

MOINI, Jasmine, M.D. (G-54049) - Huntington Beach, CA
2234, 2262 B&P Code
Stipulated Decision. Repeated acts of excessive treatment; dishonest acts including alteration of medical records; repeated acts of negligence and incompetence related to deficient record keeping.
Revoked, stayed, 3 years probation on terms and conditions, including 30 days actual suspension.
August 13, 1992

MURDOCK, Church E., M.D. (C-39884) - Mobile, AL
2305 B&P Code
Discipline by Alabama Board for conviction for tax evasion.
California: Revoked. Default.
June 10, 1992

MUSIKANT, David S., M.D. (G-45463) - Palo Alto, CA
820, 821 B&P Code
Failed to comply with a Board order compelling medical and psychiatric examinations to evaluate his ability to practice safely.
Revoked. Default.
October 25, 1992

NAMIHAS, Ivan C., M.D. (G-7313) - Tustin, CA
726, 2234(b),(c)(d)(e) B&P Code
Gross negligence and incompetence in the treatment and care of OB-GYN patients. Engaged in sexual misconduct with numerous female patients.
Revoked. Default.
July 3, 1992

NGHIEM, Thieu L., M.D. (C-40993) - Olympia, WA
2305 B&P Code
Discipline by Washington Board for sexual misconduct with female patients.
California: Revoked.
April 4, 1992

OLBRICH, Gary D., M.D. (G-1633) - Eugene, OR
2305 B&P Code
Stipulated Decision by Oregon Board.
California: Revoked, stayed, 5 years probation on terms and conditions.
June 19, 1992

OROFINO, Michael J., M.D. (A-41340) - Stamford, NY
2305 B&P Code
Discipline by New York Board for conviction for falsifying business records.
California: Revoked. Default.
May 28, 1992

PARRISH, Louis E., M.D. (C-18786) - New York, NY
2305 B&P Code
Discipline by New York Board.
California: Revoked. Default.
February 20, 1992

PATTERSON, Paul G., M.D. (C-24669) - Minneapolis, MN
2305 B&P Code
Discipline by Minnesota Board for foisting on patients prayer for deliverance as a form of medical treatment or in connection with a medical examination or treatment.
California: Revoked, stayed, 5 years probation on terms and conditions.
May 6, 1992

PATTERSON, Richard R., M.D. (A-17082) - Stockton, CA
2234(a), 2239 B&P Code
Convictions for driving under the influence of alcohol.
Revoked, stayed, 5 years probation on terms and conditions.
March 11, 1992

PATWELL, Steven W., M.D. (G-58209) - Rocklin, CA
2237 B&P Code, 11357 H&S Code
Stipulated Decision. Conviction for unlawful possession of more than 28.5 grams of marijuana.
Revoked, stayed, 5 years probation on terms and conditions, including 60 days actual suspension.
July 22, 1992

RAMADAN, Oguz K., M.D. (C-38484) - Grand Blanc, MI
2305 B&P Code
Discipline by Michigan Board.
California: Revoked. Default.
July 15, 1992

REED, James S., M.D. (C-29886) - Apple Valley, CA
2236 B&P Code
Stipulated Decision. Conviction for filing false Medicare claim.
Revoked, stayed, 5 years probation on terms and conditions.
March 15, 1992

RIVERA, Raul, M.D. (C-27288) - El Paso, TX
2305 B&P Code
Discipline by Texas Board for excessive use of alcohol.
California: Revoked, stayed, 5 years probation on terms and conditions.
April 8, 1992

SCHUSSELIN, Omar, M.D. (A-39922) - West Covina, CA
490, 2236 B&P Code
Conviction for Medi-Cal fraud.
Revoked. Default.
May 1, 1992

SCOTT, Gordon W., M.D. (A-14265) - Upland, CA
2234(b)(c) B&P Code
Stipulated Decision. Gross negligence and repeated negligent acts in the inadequate examination, diagnosis and care of a 53 year-old patient in distress who was sent home and died the same day of "myocarditis, weeks."
Revoked, stayed, 5 years probation on terms and conditions.
April 8, 1992

SHUBHAKAR, S. N., M.D. (A-33936) - Porterville, CA
2234(b) B&P Code
Stipulated Decision. Gross negligence in misdiagnosing and inadequately examining, treating and monitoring a retarded patient in a facility who suffered a trauma to the abdomen and died a day later of septic shock secondary to peritonitis, following rupture of the ileum.
Revoked, stayed, 7 years probation on terms and conditions, including 60 days actual suspension.
August 12, 1992

SIERING, William J., Jr., M.D. (A-28659) - Brewer, ME
2234(b)(c) B&P Code
Stipulated Decision. Gross negligence and repeated negligent acts in anesthesiology practice.
Revoked, stayed, 5 years probation on terms and conditions, including 90 days actual suspension.
April 12, 1992

SMITH, Sidney D., M.D. (C-32250) - Montecito, CA
2234 B&P Code
General unprofessional conduct, including incompetence, in the psychiatric care and treatment of a dying patient.
Revoked, stayed, 5 years probation on terms and conditions.
March 15, 1992

SOHO, Sandra, M.D. (G-15318) - Newhall, CA
725, 2234(b), (c)(d)(f), 2241, 2242 B&P Code; 11153, 11154, 11156, 11352 H&S Code
Gross negligence and incompetence in patient care and treatment, including excessive prescribing of controlled substances, prescribing without legitimate medical reason, and prescribing to addicts. Prior discipline.
Revoked.
May 13, 1992

SOLEIMAN, Mohyi, M.D. (A-34822) - Northridge, CA
2234(b)(c) B&P Code
Stipulated Decision. Failed to follow up and properly manage a breast mass case. Ordered four refills of the depressant drug Xanax to a patient complaining of depression. Gross negligence and repeated negligent acts.
Revoked, stayed, 5 years probation on terms and conditions.
September 21, 1992

STUPAK, Ruth Ann, M.D. (G-21385) - Los Angeles, CA
822 B&P Code
Mental illness affecting the ability to practice safely.
Revoked
April 26, 1992

THOMPKINS, Bennie L., M.D. (C42235) - Sacramento, CA
726 B&P Code
Sexual abuse and misconduct in the examination of female patients.
Revoked.
June 5, 1992

TORSETH, John Wallace, M.D. (G-62582) - Brooklyn Ctr., MN
2305 B&P Code
Suspension of license by Minnesota Board for mental illness.
California: Revoked. Default.
June 10, 1992

TSUI, Yat Kwong, M.D. (A-39440) - Sacramento, CA
2234, 2236 B&P Code
Stipulated Decision. Conviction for willfully and unlawfully prescribing controlled substances without legitimate medical purpose and while not acting in the course of professional practice.
Revoked, stayed, 5 years probation on terms and conditions, including 120 days actual suspension.
May 20, 1992

WATSON, Lloyd L., M.D. (A-20719) - Riverside, CA
725, 2242, 2262, 2234(e) B&P Code
Excessive prescribing; prescribing controlled substances without prior exam and medical indication; falsifying medical records.
Revoked. Default.
May 27, 1992

WILLIAMS, Paul Carroll, M.D. (C-34650) - Lake Oswego, OR
2305 B&P Code
Discipline by Arizona Board related to alcohol abuse.
California: Revoked, stayed, 5 years probation on terms and conditions.
June 18, 1992

WINSTEAD, III, Arthur, M.D. (C-37563) - Cupertino, CA
2227, 2228, 3527(d) B&P Code
Stipulated Decision. Conviction for filing false Medi-Cal claims. Inadequate supervision by allowing his physician assistant 1) to treat patients without written protocols or guidelines; 2) to prescribe medication without pre-authorization; and 3) to bill insurance companies for physician-performed services when actually provided by the PA.
Revoked, stayed, 5 years probation on terms and conditions, including 120 days actual suspension.
August 31, 1992

WRIGHT, Lucien, M.D. (C-17987) - Eureka, CA
2234, 2236 B&P Code

Stipulated Decision. Conviction for felony drunk driving causing bodily injury.
Revoked, stayed, 5 years probation on terms and conditions, including 60 days actual suspension.
September 21, 1992

YAU, Pak Chenk, M.D. (A-34997) - Hayward, CA
725, 2234(a), (e)(f) B&P Code
Violated probation of prior discipline. Also excessive use of expensive and time-consuming laboratory and other testing procedures for modest medical conditions in his ENT practice, with poor documentation of reasons and outcomes.
Revoked.
July 23, 1992

Acupuncturists

Institute of Oriental Medicine (N/L#)
Pinole, CA
Institute failed to comply with procedures for gaining Acupuncture Committee's approval for continuing education courses.
Continuing Education Provider status is revoked, but revocation is stayed for 2 years on terms and conditions, including 90 days actual suspension.
February 21, 1992

Physical Therapists

GEE, Mary Catherine, P.T. (PT-16408) - Ramona, CA
2260 B&P Code
Stipulated Decision. Fraud in procurement of license - failed to disclose criminal conviction for petty theft in license application.
Revoked, stayed, 3 years probation on terms and conditions.
October 9, 1992

JAASKELAINEN, Guy, PT Asst. (AT-1012) - Downey, CA
726, 2660(h)(l) B&P Code
Physical therapy assistant engaged in sexual misconduct with female patient during physical therapy sessions.
Revoked
February 21, 1992

PUROHIT, Jagdischandra, P.T. (PT-11439) - San Dimas, CA
726, 2660(h) B&P Code
Stipulated Decision. Sexual misconduct with female patients.
Revoked.
July 24, 1992

Physician Assistants

CHARLET, Jorge, P.A. (PA-11980) - Stockton, CA
3531 B&P Code
Physician Assistant, virtually unsupervised, prescribed controlled substances without medical indications to undercover agents, resulting in criminal convictions against the PA.
Revoked.
February 26, 1992

DRAKE, Douglas A., P.A. (PA-12158) - Temecula, CA
3527(a), 2305 B&P Code
Stipulated Decision. Disciplined by Utah.
California: One year suspension, stayed, 5 years probation on terms and conditions.
February 28, 1992

Podiatrists

CAGGIANO, Charles, DPM (E-763) - Tacoma, WA
2305 B&P Code
Discipline by Washington Podiatry Board for sexual relations with patient.
California: Revoked. Default.
April 6, 1992

DACRE, George E., DPM (E-900) - Sacramento, CA
2234(e), 2261, 2262 B&P Code
Stipulated Decision. Removed cyst at the elbow and falsified records to say it was on the foot.
Revoked, stayed, 5 years probation on terms and conditions.
November 21, 1992

DAVIS, Harvey, D., DPM (E-1402) - National City, CA
Failed to comply with probation of prior discipline.
Revoked, stayed, 3 years probation on terms or conditions, including 30 days actual suspension.
April 28, 1992

GERARDI, Vincent, DPM (E-2258) - Redlands, CA
Failed to comply with the terms and conditions of probation under prior discipline. Little or no effort to keep in contact with his probation officer.
Revoked.
June 11, 1992

KNIGHT, Robert W., Jr., DPM (E-2328) - San Mateo, CA
2234, 2234(c) B&P Code
Stipulated Decision. Repeated negligent acts in the manner of treating two female patients who were asked to disrobe.
Revoked, stayed, 5 years probation on terms and conditions.
August 23, 1992

SPATZ, Arthur R., DPM (E-3012) - Garden Grove, CA
821 B&P Code
Failed to comply with an order of the Podiatry Board to undergo a psychiatric examination.
Revoked. Default.
February 12, 1992

TARSKY, Evan S., DPM (E-2171) - Capitola, CA
2234, 22234(b) B&P Code
Stipulated Decision. Gross negligence in performing a breast exam of a 24 year-old female patient as part of physical exam prior to removing a wart from her great toe.
Revoked, stayed, 5 years probation on terms and conditions.
May 11, 1992

WRIGHT, Randolph, DPM (E-2322) - Alameda, CA
2236, 2234(e) B&P Code
Stipulated Decision. Conviction related to dishonest lifting from 84 year-old patient a valuable one-of-a-kind autographed photograph of the patient with baseball greats Babe Ruth and Lou Gehrig.
Revoked, stayed, 5 years probation on terms and conditions.
February 21, 1992

Psychologists

BERG, Greg K., Ph.D. (PSY-5800) - Gilroy, CA
2960(i) B&P Code; 1396.1 16 CCR
Stipulated Decision. Dual relationship with adult female client. Dual relationship with minor female client.
Revoked, stayed, 7 years probation on terms and conditions, including 30 days actual suspension.
February 8, 1992

BURGOS, Luis A., Ph.D. (PSY-10564) - San Diego, CA
2960(j)(n) 726 B&P Code
Stipulated Decision.
Sexual relations with a female patient arising out of the therapeutic relationship.
Revoked.
February 28, 1992

CORMIER, Sidney, Ph.D. (PSY-6659) - Redding, CA
2960(j) B&P Code
Stipulated Decision. Gross negligence in entering into a dual relationship with two female patients.
Revoked, stayed, 5 years probation on terms and conditions, including 30 days actual suspension.
June 22, 1992

COUK, Deborah L, Ph.D. (PSY-10865) - Sacramento, CA
2960(n) B&P Code
Forged prescriptions stolen from Medical Center to obtain Vicodin, a narcotic painkiller, to alleviate chronic and debilitating pain from a condition ultimately diagnosed as multiple sclerosis.
Revoked, stayed, 5 years probation on terms and conditions.
April 19, 1992

DOLLAR, Barry L., Ph.D. (PSY-7129) - Santa Barbara, CA
490, 2960(a) B&P Code
Conviction for forgery in connection with the operation of his psychology practice.
Revoked, stayed, 5 years probation on terms and conditiions.
April 15, 1992

HOUSE, James E., Ph.D.. (PSY-11947) - San Francisco, CA
2960(n) B&P Code
Just two months after being granted a probationary license because of prior dishonesty, he filed a false probation report in violation of his fresh probation.
Revoked.
September 27, 1992

JONES, Linn E., Ph.D. (PSY-9100) - Alameda, CA
Stipulated Decision. When training as a psychological assistant, engaged in the unlawful practice of psychology by not having a registered supervisor.
Public reprimand, subject to conditions.
August 31, 1992

LORD, Donald, F., Ph.D. (PSY-4880) - Mt. Shasta, CA
726, 2960(j)(n) B&P Code
Gross negligence in entering a dual relationship with a female patient that included a sexual and social relationship, and sexual misconduct.
Revoked, Default.
May 13, 11992

SHAPIRA, Cynthia P., Ph.D. - (PSY-4880)
Palo Alto, CA
2960(j)(n) B&P Code
Stipulated Decision. Sex with patient.
Revoked.
March 2, 1992

MATUSCHKA, Ernest, P., Ph.D. (PSY-3422) - Kearny, NE
2960(h),(l)(m)(n) B&P Code
Discipline by Nebraska for sex with patients and other acts of unprofessional conduct.
Revoked. Default.
August 5, 1992

Registered Dispensing Opticians

DELANEY, H. Melton, R.D.O. (SL-2226) - San Francisco, CA
490, 2559.3, 2555.1 B&P Code
Conviction for Medi-Cal fraud.
Revoked. Default.
September 8, 1992

SHRAYBER, Ernest, R.D.O. (SL-693) - San Francisco, CA
490, 2559.3, 2555.1, 651, 655
Optician convicted for holding himself out as an optometrist without holding an optometrist license. Deceptive advertising. Acted as an optometrist by examining, prescribing, delivering contact lenses that were ill-fitting, painful and uncomfortable, and out of focus.
Revoked.
July 22, 1992

Respiratory Care Practitioners

BLAIR, Loyd B., RCP (RCP-9257) - Yucca Valley, CA
3750(d), 3752 B&P Code
Conviction for incest and for unlawful sex with minors.
Revoked.
April 24, 1992

BURBAGE, John M., RCP (RCP-10065) - Encinitas, CA
3750 B&P Code
Conviction for receiving stolen property. Conviction for possession of narcotic paraphernalia.
Revoked.
November 14, 1992

ESTELLE, Veronni, RCP(RCP-10840) - Long Beach, CA
3750(d) B&P Code
Stipulated Decision. Conviction for possession of paraphernalia used for unlawfully injecting or smoking a controlled substance.
Revoked, stayed, 5 years probation on terms and conditions.
April 12, 1992

GARCIA, Deborah, RCP (RCP-11522) - Campbell, CA
3750.5(a)(b) B&P Code
Self use of drugs.
Revoked, stayed, 5 years probation on terms and conditions.
October 24, 1992

JOHNSON, Sharon, RCP (RCP-7720) - Compton, CA
119, 3760 B&P Code
Displayed an expired license that had been fraudulently altered. Continued to practice without a valid, paid-up license.
Revoked. Default.
March 3, 1992

KINDRED, Kevin S., RCP (RCP-11021) - Ontario, CA
490, 3750(d), 3750.5(c) B&P Code
Conviction for being under the influence of a controlled substance, cocaine.
Revoked. Default.
September 20, 1992

KLEIN, Adam M., RCP (RCP-1838) - Westlake Village, CA
490, 3750(b), (d)(j) B&P Code
Lied on his license application concealing a prior conviction for drunk driving. After licensure, four separate convictions for inflicting corporal injury on his wife.
Revoked.
April 8, 1992

LEUSCH, Richard M., RCP (RCP-10457) - Hesperia, CA
3752, 3752.5 B&P Code
Stipulated Decision. Conviction for lewd conduct with minor.
Revoked.
November 25, 1992

MC KILLOP, Rita Ann, RCP (RCP-6232) - Ridgecrest, CA
3750(d) B&P Code
Stipulated Decisiion. Conviction for forgery related to stolen credit card.
Revoked, stayed, 4 years probation on terms and conditions.
March 1, 1992

MOSER, Patrick D., RCP (RCP-11637) - Redding, CA
3755, 3750(j), 3750.5 B&P Code
Stipulated Decision. During home visit for respiratory assessment, obtained Tylenol with codeine from cancer patient and self used it in the patient's home.
Revoked, stayed, 3 years probation on terms and conditions.
April 12, 1992

MYERS, Ethel H., RCP (RCP-7165) - San Francisco, CA
3750.5(a) B&P Code
Self administration of cocaine and marijuana.
Revoked.
November 2, 1992

SAMM, Linda, RCP (RCP-4576) - Los Angeles, CA
3750, 3752, 3752.5 C&P Code
Conviction for assault with a firearm, with mitigating circumstances.
Revoked, stayed, 2 years probation on terms and conditions.
August 29, 1992

SHELTON, Anneliese, RCP (RCP-8441) - Riverside, CA
3750.5(a) B&P Code
Unlawful possession of cocaine.
Revoked. Default.
September 20, 1992

VOLUNTARY SURRENDER OF LICENSE WHILE CHARGES PENDING

Physicians and Surgeons

ANDERSON, Kenneth N., M.D. (C-26306) - Seattle, WA
August 26, 1992

CHALAIRE, Frank M., M.D. (C-24984) - San Antonio, TX
September 5, 1992

COOPERMAN, Steven G., M.D. (G-16540) - Beverly Hills, CA
May 13, 1992

CZMUS, Akim F., M.D. (G-53422) - Burbank, CA
August 26, 1992

ELMER, Joseph W., M.D. (G-8782) - Leesburg, FL
March 24, 1992

HERMAN, Stephen, M.D. (A-20234) - Villa Park, CA
March 12, 1992

HIROSE, Teruo, M.D. (A-20879) - Riverdale Bronx, NY
May 28, 1992

HOWARD, Ronald M., M.D. (G-38447) - Redlands, CA
October 14, 1992

LAVIGNE, Jeffrey, M.D. (G-26459) - New York, NY
October 15, 1992

LA SCOLA, Raymond, M.D. (G-13959) - Santa Monica, CA
February 20, 1992

O'TOOLE, Pedar, M.D. (C-39520) - Groton Long Point, CT
July 15, 1992

PARK, Jhong D., M.D. (C-38479) - Lancaster, CA
February 22, 1992

PARSONS, James T., M.D. (C-24969) - Houston, TX
April 12, 1992

PATRICK, Joseph J., M.D. (G-41400) - Houston, TX
September 26, 1992

SCHLOM, Louis, M.D. (A-28614) - Colorado Springs, CO
May 2, 1992

SCHULER, James D., M.D. (G-00567) - Smith River, CA
October 8, 1992

SOREFF, Stephen, M.D. (G-23818) - Worchester, MA
September 18, 1992

STEINBERG, Harry, M.D. (A-28027) - Rancho Mirage, CA
September 23, 1992

WEISS, Mortimer, M.D. (C-7010) - Petaluma, CA
October 1, 1992

WHITE, Harold W., M.D. (A-11888) - Fairfax, CA
July 10, 1992

WILSON, Jr., George C., M.D. (G-7531) - Mill Valley, CA
June 1, 1992

Acupuncturists

LEW, Chae Woo, A.C. (AC-247) - Hillsborough, CA
October 9, 1992

Psychologists

CABUSH, David W., Ph.D. (PSY-4053) - Fullerton, CA
February 4, 1992

HANSEN, Charles, Ph.D. (PSY-5744) - San Diego, CA
May 1, 1992

PROBATIONARY CERTIFICATE GRANTED:

Physician and Surgeon

DORSEY, Charles, M.D. (C-43037) - Spokane, WA
August 25, 1992

NATIVIDAD, Ernesto, M.D. (A-51092) - Napa, CA
August 11, 1992

RICHARDS, William C., M.D. (G-74530) - Napa, CA
June 30, 1992

SONNENBERG, Martha R., M.D. (G-74151) - Artesia, CA
May 26, 1992

Podiatrist

FRIEDMAN, Marc (NL#) - Trabuco Canyon, CA
September 26, 1992

Psychologists

KIRKLAND, Karen D., Ph.D. (PSY-11471) - San Diego, CA
March 5, 1992

Psychological Assistants

KOHARCHICK, Mark A., (PSB-19572,PSB-19573,PSB-19574) - Inyokern, CA
March 6, 1992

Respiratory Care Pratitioner

COCKE, Linda Jean, RCP (NL#) - Moreno Valley, CA
October 2, 1992

HULTEN, David, RCP (RCP-15762) - San Bernardino, CA
October 6, 1992

To request copies of complete disciplinary decisions and accusations (statements of charges) write to:

Medical Board Enforcement
Attention: Central File Room
1426 Howe Avenue, Suite 54
Sacramento, CA 95825-3236.

For quick, orderly processing, enclose a check based on $2.00 for each copy of a decision or an accusation along with your request. Please give complete name and license number of doctor or health practioner. Sorry, but we are unable to service phone requests.

WHERE'S MY #@%!&a@! ACTION REPORT?!

We have received a number of calls asking for the latest edition of the *Action Report*, which historically has been published quarterly. Due to budget reductions from the transfer of 10% of our special fund to the State's General Fund by the 1992 Budget Act, it was decided to go to a biannual publishing schedule. The latest issue published was May 1992, volume 45.

We are presently considering returning to the quarterly publication schedule, however, this would not begin for at least 6 months. In the meantime, hospitals, medical facilities, insurance companies and HMOs may request the Enforcement Program's "Hot Sheet" which includes all disciplinary actions and filings and is published monthly.

To be placed on the "Hot Sheet" mailing list, please write:

Medical Board of California
Enforcement Program - Hot Sheet
1426 Howe Avenue, Suite 54
Sacramento, CA 95825-3236

NEW BOARD, *continued from page 1*
Shaklee Corporation's first director of public affairs. He later was executive vice-president of a worldwide consulting firm, public affairs vice president of the nation's second largest regional hospital association and vice president of the Asia Foundation, before assuming his present post, Executive Director of the Saint Francis Foundation in San Francisco.

Long active in civic affairs, in addition to his Medical Board activities, Mr. Hasenkamp served on a Presidential commission for ten years, was on the boards of the California Business Council, the Better Business Bureaus of the U.S., the World Affairs Council and The Commonwealth Club, the world's largest public forum. He is national president of Sigma Phi Epsilon, and president of the Hillsborough School Board, and a member of the editorial board of the Federation of State Medical Boards of the United States.

Board Secretary **Dr. Robert del Junco** has served on the Board, on the Division of Licensing, since 1991, when he was appointed by Governor Wilson. Dr. del Junco is a head and neck surgeon in private practice in the City of Orange and is an assistant clinical professor of surgery at the University of California Irvine Medical Center. His hospital affiliations include St. Joseph's Hospital and Children's Hospital in Orange and Western Medical Centers in Anaheim and Santa Ana.

Dr. del Junco received his medical degree from the School of Medicine at the University Autonomous de Guadalajara in 1980.

Other new officers include: Ray Mallel, president of Division of Licensing; Dr. Michael Weisman, president of the Division of Medical Quality; and, Dr. Madison Richardson, president of Division of Allied Health Professions.

Executive Director:

The Board selected **Dixon Arnett** to serve as the new executive director in December 1992. Arnett is a former State Assemblyman who represented San Mateo County from 1971 through 1978 and was the minority whip in 1973 and 1974. During the Reagan Administration, Arnett served as Deputy Under Secretary for Intergovernmental Affairs for the U.S. Department of Health & Human Services.

His most recent position was as president of Dixon Arnett Associates, a consulting firm affiliated with William-Kuebelbeck and Associates, with offices in Washington D.C. and Belmont, California. When Governor Pete Wilson was U.S. Senator, Arnett served as his Legislative Director in Washington.

A graduate of Stanford, during the 1960s, Arnett served as Director of Community Relations for the University.

The New Board

New Members,
The Division of Licensing:

The Division of Licensing has two new members, Dr. Alan E. Shumacher and Bruce Hasenkamp.

Dr. Alan E. Shumacher received a B.S. from the University of Illinois in 1953, a B.S. in Medicine from the University of South Dakota in 1955, and his M.D. from the University of Iowa in 1957. He is board certified in pediatrics and in neonatal-perinatal medicine. He is Director Emeritus of the Division of Neonatology at Children's Hospital-San Diego, where he previously served as vice president and associate medical director. He is a Fellow of the American Academy of Pediatrics and a member of the American College of Physician Executives. In 1980, he was a National Endowment for the Humanities Fellow in the Political Basis of Health Care Policy at the University of Virginia. Dr. Shumacher is a past president of the San Diego Pediatric Society, and holds clinical appointments at both UCSD and SDSU. He is a member of the American Medical Association, the California Medical Association, and the San Diego County Medical Society.

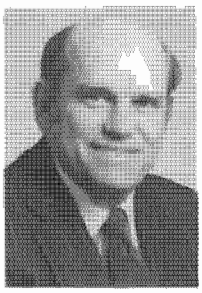
Bruce Hasenkamp, vice president of the Board, has previously been serving on the Division of Allied Health Professions. He was transferred to the Division of Licensing in December 1992.

New Members,
The Division of Medical Quality:

The Division of Medical Quality has two new members. Karen McElliott and Lawrence Dorr, M.D.

Karen McElliott is a former public member of the California Board of Podiatric Medicine, where she served as its president in 1991. She attended Colorado State University and has served and chaired various organizations and task forces within her community focusing on health, education and land use issues.

She has been a member of the Progress '87 Task Force which addresses issues on traffic, schools, public facilities, development and growth in the City of San Diego and also the Regional Planning Area Task Force on Long Range School Planning in San Diego. In addition, she has served on the Advisory Committee for the Utilization of School Facilities and is the recipient of a Special Commendation from the Board of Education, San Diego Unified School District.



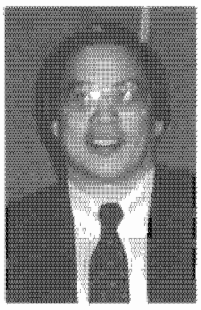
Dr. Lawrence Dorr is a practicing orthopedic surgeon in Los Angeles. He is the director of the USC Center for Arthritis and Joint Implant Surgery at USC University Hospital, is a clinical professor at the University of Southern California, and is a staff physician at Rancho Los Amigos Hospital in Downy. Former positions held include Instructor of Surgery at Cornell University, Chief of the Spinal Injury Service at Rancho Los Amigos Hospital and Chief of Reconstructive Surgery at University of Southern California's Department of Orthopaedics.

Board certified in orthopaedics in 1978, Dr. Dorr has written a number of publications and is active in many organizations. He presently is the Editor-in-Chief for *Techniques in Orthopaedics*, the Founding Editor for The *Journal of Arthroplasty*, and sits on the editorial boards of *Seminars in Arthroplasty* and *Clinical Orthopaedics*.

Born in Iowa, he received his B.A. at Cornell College at Mt. Vernon, Iowa (1963), and received his Master of Science (1965) and Medical Degrees (1967) from the University of Iowa Medical School. He performed his internship at the LAC-USC Medical Center as well as his orthopaedics residency. This was followed by a fellowship at the Hospital for Special Surgery in New York and military service. From 1968 to 1971 he served in the US Navy in Jacksonville, Florida and Camp Pendelton, California.

New members,
The Division of Allied Health Professions:

The Division of Allied Health Professions has three new members; Stewart Hsieh, Mike Mirahmadi, M.D., and Barbara Stemple.



Stewart Hsieh is a partner in the law firm of Frye & Spencer in Los Angeles. His primary practice is in business transaction that include corporate start-ups, employment agreements, partnerships and acquisitions, estate planning and construction law.

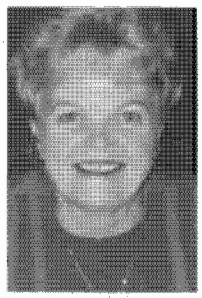
Active in politics and civic organizations, Mr. Hsieh is a member of the Los Angeles County Republican Central Committee, former Regional Co-Chair of the California Republican Party's Asian Outreach Project, Committee Member of the Boy Scouts of America, Asian Advisory Committee Member to the Los Angeles County Museum of Natural History, and a member of the Board of Directors of RIMPAC, a political action committee focusing on Asian interests. He is a member of the Los Angeles County Bar Association, and serves on their Senior Citizen Outreach Committee as co-chairman. Recently, he became a member of the California Society for Healthcare Attorneys.

Mr. Hsieh received his B.S. from California State University, Los Angeles in 1975 and his JD from Southwestern University School of Law in 1978, and is a member of the Phi Delta Phi Legal and Sigma Alpha Epsilon Fraternities.

Dr. Mike Mirahmadi is a Board Certified Nephrologist in private practice in the Beverly Hills area. He is Associate Professor of Medicine at UCLA and is formerly Chief of Staff at Westside Hospital. At Westside Hospital, he is presently the Chairman of the Utilization Review Committee, and a member of the Board of Directors. In addition, he is a member of the Utilization and Management Committee in most hospitals in the West Los Angeles area, including Cedars-Sinai Medical Center, Midway Hospital and Brotman Medical Center.

Dr. Mirahmadi was born in Tehran, Iran, and graduated from the Tehran University Medical School in 1965. He completed his internship at Northwestern University at St. Francis Hospital in Evanston, Illinois, and postgraduate training at the Veteran Administration and Loyola University Hospitals in Hines, Illinois and Cook County Hospital in Chicago. In 1970 to 1972, Dr. Mirahmadi came to California for a renal fellowship at Wadsworth Veterans Hospital, Harbor General Hospital, and UCLA Medical Center.

Dr. Mirahmadi is a consultant to California Medical Review, Inc., and his special expertise is in cost containment and better utilization of hospital days by physicians.



Barbara A. Stemple is the Senior Vice President for Government Affairs for the Greater San Diego Chamber of Commerce. She was Senior Senate Staff in Washington D.C. for Governor Pete Wilson, when he was Senator Wilson, as well as serving as his assistant when he was mayor of San Diego.

Active in a number of organizations, she is a former PTA president and former vice president of the California Federation of Women's Clubs. She is a member of the San Diego Childcare Coalition, San Diego Safe Kids Coalition, Alcohol/Drug Abuse Prevention Task Force Business Council, Small Business Advisory Council, and San Diego Crime Commission.

Medical Board Factoid:
The Board has 19 members, 12 physicians and 7 non-physicians. 17 are appointed by the Governor, one by the Senate and one by the Assembly. Terms are 4 years, and members may be reappointed once, consecutively.

CHP, *Contnued from page 3*

that the backlog be eliminated. The reports in the media leave the impression that these cases all involved physicians and patient harm like the Martin Luther King cases. In fact, the most important cases that involved serious allegations of patient harm were never in the backlog.

Because of staffing deficiencies, the investigators worked the serious cases and "backlogged" the less serious, such as records and billing disputes. They were also not all physician cases, but involved allied health professionals such as hearing aid dispensers and opticians as well. Many involved billing and record disputes that now our Central Complaint Unit would mediate. These types of cases almost never result in any formal discipline. Still, I have ordered a review of all cases closed that involved death, disability, or sexual abuse as a part of the allegations to see if any of these cases should be reopened.

Finally, the cases that were closed without merit during that time were destroyed. To the public-at-large, this conjures images of illegal shredding of government documents in political scandals. In fact, once cases are found to have no merit the Board is required to destroy them. There is certainly good reason for this. If there is truly no evidence to sustain an allegation, the keeping of these files would be tantamount to keeping secret dossiers.

Unfair or improper personnel actions:

Some allegations of personnel irregularities were sustained by the CHP investigation. Allegations of rampant favoritism, nepotism, and illegal promotions and hires reported in the press were not sustained. The investigation found three personnel transactions that were irregular: one person is said to have lied on a employment application; another person is said to have not interviewed for a management services technician position and was given the job instead of one of the applicants who had competed in the exam process; a third involves the transfer of an enforcement supervisor that was perceived by management as less than satisfactory.

Falsification of attendance documents:

This allegation was not sustained. Some union members complained that supervisors did not put in full days, but under the law, it is up to their higher level supervisors to evaluate whether or not they are performing their duties satisfactorily.

Misuse of State time:

A Diversion Program Compliance Specialist was found to have engaged in secondary employment while on the State's clock. I have placed this individual on administrative leave, and final discipline is currently on appeal at the State Personnel Board.

Misuse of State vehicles and equipment:

Allegations of violations in the use of State vehicles were sustained. Investigators must drive undercover vehicles and are allowed to commute to and from work with them. The cars have been housed at employees' homes during non-business hours, not only for the convenience of the employee, but because it would be unwise to leave them in the Board's parking lot for security reasons. To do this, however, the Board should have obtained "home storage permits" from the Department of General Services in advance of allowing employees to garage the cars at home. The Board did not obtain these required permits. (This General Services Policy is now under review and may not be required in the future.)

One employee was found to have numerous violations involving misuse of his vehicle for personal business, using the State Services Credit Card for personal business, mostly for gasoline. This person I have placed on administrative leave and placed on suspension for these violations and others, but his case is also under appeal.

Misuse of State telephones:

Two other employees were found to have misused their State telephones, including cellular phones, by using them for personal business. Although only two individuals are involved, the number of calls, particularly cellular phone calls, are phenomenal. From the period of May 1, to August 12, 1992, one individual made 857 non-business related calls. Both of these individuals I have placed on administrative leave pending, but final discipline is under appeal at the State Personnel Board.

Misuse of undercover driver's licenses:

One investigator used her undercover driver's license to rent a car for State business. It is against State policy to use an undercover license for this purpose - she should have used her real license in this one instance, but found at the rental counter that she had left her regular license at home.

Misuse of "frequent flyer" mileage credits:

Another employee was found to have used frequent flyer miles for personal trips. Alone, this would not seem very serious, however, this employee went so far as to purchase airline tickets for State business, sign-in at the airport to receive the credits, and then drive to his destination without using the ticket. Also, this individual transferred credits for free trips to his wife and his supervisor.

Others were found to have "frequent flyer" accounts and to have accumulated credits from State travel, but have never received any awards. Although there is no State

see CHP, *continued on page 25*

policy that specifically addresses frequent flyer miles, to use these credits for personal trips is inconsistent with the broader policy addressing promotional premiums, which basically states that it is inappropriate for employees to benefit from these types of promotions.

Other Issues:

The CHP report raises concerns about the conduct of staff and management of the Diversion Program, including inappropriate contract payments, incompatible business activities of employees that may pose a conflict of interest, accepting gifts, and other ethical issues. Upon further investigation, and a personnel hearing, these issues were reduced to possible misuse of State time and failure to take action against an employee. The entire senior staff of the Diversion Program was been placed on administrative leave, with two employees being suspended and one demoted. All actions are under appeal at the Personnel Board. Further, one therapist's contract has been terminated pending a complete review. In addition, two instances of sexual remarks were cited. Both instances involved inappropriate comments made by male investigators about the physical characteristics of female employees. In one instance, the employee found the remark offensive, in the other instance, the employee stated that she did not find it offensive. The two investigators were counseled months ago about their conduct, and have since been sent to sensitivity training to prevent any further inappropriate behavior.

"Totally, only 11 employees are involved, with only 4 charged with the most serious violations"

There you have it - warts and all. Totally, only 11 employees are involved, with only 5 employees charged with the most serious violations.

Abuses were not wide-spread, as initially alleged, but concentrated instead, among very few employees in certain program locations. Because of this, remedial action should be relatively easy. To assure that these problems have been remedied and prevent further problems, I have developed the following plan:

Take care of the bad players:

The five individuals who were accused of serious violations were immediately placed on administrative leave. After further review of the evidence (there are 15 binders of documentation that were reviewed by legal counsel), one employee was completely exonerated, one has been fired, two have been suspended and one demoted. All adverse personnel actions are under State Personnel Board appeal. Other remedial options have been taken against those guilty of less serious or technical violations.

Improve Enforcement Program oversight and management:

This has already begun. The planned Enforcement Program reorganization was implemented in November, placing a higher-level manager over the Enforcement Program and the Diversion Program. (Before this restructure, the Enforcement Program was separate from the Diversion Program.) With the new Chief of Enforcement's help, we will be seeking the Board's approval of changes within structure and policy that will improve the Enforcement Program's accountability. In addition, complaint handling and tracking is now in one central location, and every complaint is entered into our computer tracking system. (Cases that were in the backlog were opened before the Central Complaint Unit was established.)

Reopen the Martin Luther King cases:

These cases have been reopened and are being reinvestigated. In addition, when these cases were originally closed, the Board did not have the benefit of the Attorney General's Health Quality Enforcement Unit. Now, the Board has attorneys who specialize in Medical Board Enforcement cases, so the legal review of the evidence may be different, reflecting this expertise.

Improve the Diversion Program:

A task force, headed by Division of Medical Quality member, Dr. John Kassabian, has met and reviewed the Diversion Program and made several recommendations. There will now be more formal procedures for selecting Diversion Evaluation Committee members, greater control and safeguards established in the program's testing, and greater control over support contracts. The entire program is now overseen by the new chief of enforcement. I have reassigned the Senior Staff pending final review of the evidence. All of these actions will improve the accountability of the entire Diversion Program.

Report progress of improvements:

I have informed Agency Secretary Sandra Smoley and the Governor that I will prepare monthly progress reports to them and the Department of Consumer Affairs as to the status of the planned improvements. In six months, I anticipate that I will be able to report that all remedial action addressing the violations found in the CHP report will be fully implemented. In addition, State and Consumer Services Secretary, Sandra Smoley, and Board President Jacquelin Trestrail jointly convened a "Medical Board Summit" on March 18 and 19. The purpose of the

see **CHP**, *continued on page 26*

CHP, *Continued from page 25*

Summit, which was open to the public, was to discuss the future of the Board and its programs, the Board's goals and objectives and the means by which the Board's goals can be obtained. Experts from major organizations were invited to be participants in the discussions. Out of the Summit came a number of creative ideas and solutions that Board staff is presently studying and working to implement.

Finally, it is my intention to take whatever legal action is necessary to ensure that the public is protected and that physicians' licensing fees are used wisely and properly.

Dixon Arnett is Executive Director of the Medical Board of California.

DISCIPLINE, *Continued from page 4*

Better education could reduce the small number that are for sincere prescribing errors, but exercising better judgement by conducting a medical exam rather than writing prescriptions on demand would prevent the majority. Self-use is another problem which could be prevented by early reporting by peers and aggressive rehabilitation and treatment programs for addicted physicians.

In the remaining medical quality cases, many could probably have been prevented through better education, and more effort by the physicians to keep-up their knowledge and skills current through training; possibly through better continuing education.

To further demonstrate the value of greater education, 82 of the 100 cases were tabulated by the dates of initial licensure. The results show that 42, or over 50% of the disciplinary actions were taken against physicians originally licensed between 1973 and 1984, a 12-year period. The overall time span of original licensure of the 100 cases covered from 1938 to 1989, a span of 50 years.

Assuming that over 90% of physicians continue in residency training for an average of three years after initial licensure, this means physicians are most vulnerable to discipline between the 9th and 20th years after entering medical practice (completing residency training). This indicates that specialty boards that require recertification every ten years are catching physicians at the front edge of this high risk period.

As stated before, these cases are not a scientific sample, but they can serve as a window to look into and view what kind of behavior is causing doctors to be disciplined. There will never be a time where bad judgement or bad behavior will totally be eliminated. We can, however, educate physicians about the high cost of bad judgement and encourage more and better education programs to keep physicians more current. Most discipline could be prevented.

Tom Heerhartz is the Assistant Executive Director of the Medical Board of California.

RANK, *Continued from page 5*

practice is clearly misleading.

A license only certifies that a physician, at one time, met the minimum requirements for licensure. Boards everywhere license physicians ranging from the minimally qualified to those with outstanding credentials. Medical licenses do not ensure that a physician is qualified to be practicing in a particular specialty, nor can it attest to the level of a physician's ethical standards. As in the practice of medicine, often prevention is much more effective than treatment. Discipline can only be rendered after a violation has occurred. For that reason, California has some of the highest, and most specific standards in the nation. We try to do our part to prevent problems before they occur by weeding-out those who are unqualified, impaired, or morally corrupt, before allowing them to practice on our citizens.

So how does California really rank? With all of the differences in reporting criteria, it's difficult to say. I think it's safe to say that we deserve much better than the ranking given in the report. In order to come up with a more objective rating system, we will need to work more closely with the Federation of State Medical Boards to achieve greater consistency in the recording and subsequent reporting of data to Public Citizen. Perhaps then California will be given credit for its many safeguards, and consumers will have greater confidence in the system.

Dixon Arnett is Executive Director of the Medical Board of California.

~~Eror Errer~~ #!*?%@! Correction:

In the last issue of the *Action Report*, May 1992, Volume 45, there was an error in the article "Why, When, and How to Report Communicable Diseases in California." The article appeared on page 24, and in the last sentence in the third bulleted paragraph in the left column (nine lines from the bottom of the page), the sentence omitted the word "not." The sentence should read:

> "In 1990, some metropolitan areas did not qualify for Federal Ryan White AIDS funding because they could ***not*** document the required 2,000 cases of AIDS....."

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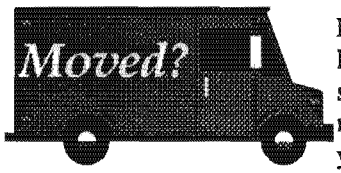

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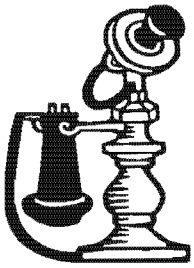

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